

## **PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made in Johnson County, Kansas, by and between the City of Olathe, Kansas, hereinafter "City," and TREKK Design Group, LLC, hereinafter "Consultant" (collectively, the "Parties").

City intends to construct an improvement project (hereinafter called the "Project") in Olathe, Kansas, described as follows:

### **West Cedar Creek Sewer Interceptor** **Project No. 1-C-011-24**

The Project is more fully described in **Exhibit A** (attached hereto and incorporated herein by reference).

By executing this Agreement, Consultant represents to City that Consultant is professionally qualified to perform services on this Project and is licensed to perform engineering services by all public entities having jurisdiction over Consultant and the Project.

### **SECTION I - DEFINITIONS**

As used in this Agreement, the following terms will have the following meanings unless otherwise stated or reasonably required by the Agreement, and other forms of any defined words will have a meaning parallel thereto. All terms defined in the most recent version of the Engineers Joint Contract Documents Committee (EJCDC) Standard General Conditions of the Construction Contract (the "General Conditions") adopted by City will have the same meaning when used in this Agreement unless otherwise specifically stated or in the case of a conflict in which case the definition used in this Agreement will prevail in the interpretation of this Agreement.

**"Additional Services"** means services in addition to those listed in **Exhibit B**.

**"City"** means the City of Olathe, Kansas, a municipal corporation duly organized under the laws of the State of Kansas, its employees, appointees, and officers.

**"Consultant"** means the company or individual identified above, herein, and its affiliates, subsidiaries, employees, agents, and assigns.

**"Construction Cost"** means and includes but is not limited to the cost of the entire construction of the Project, including all supervision, materials, supplies, labor, tools, equipment, transportation and/or other facilities furnished, used or consumed in connection with the Project, without deduction on account of penalties, liquidated damages or other amounts withheld from payment to a construction contractor or contractors, but such cost will not include Consultant's fee, or any other payments to Consultant as set forth herein, and will not include cost of land or rights-of-way and easement acquisition.

**"Contract Documents"** means those documents so identified in the Agreement for Construction of this Project including all Consultant Documents.

"Consultant Documents" means all documents required or reasonably implied by the nature of the scope of services to be performed by Consultant hereunder, including, but not limited to, plans, specifications, drawings, tracings, designs, calculations, sketches, models and reports.

"Professional Services" means the professional services, labor, materials, supplies, testing, surveying, title work, observation, if applicable, and all other acts, duties, and services required of Consultant under this Agreement including any Additional Services.

"Project" is as above described.

"Project Manager" means the person employed and designated by City to act as the City's representative for the Project.

"Right-of-Way" and "Easements" means and includes the public street, highway, or road right-of-way and any other land dedicated to or otherwise subject to public use.

"Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all the foregoing.

"Traffic Control Plan" means a specific plan that includes but is not limited to signing; application and removal of pavement markings; construction sequencing and scheduling; methods and devices for delineation and channelization; placement and maintenance of devices; traffic regulation; and inspection made in accordance with the City's technical specifications.

## **SECTION II - COMPENSATION**

### **A. FEES & EXPENSES**

1. Total Fee: City agrees to pay Consultant an amount not to exceed \$4,810,132.60 (Four Million Eight Hundred Ten Thousand One Hundred Thirty-two Dollars and 60 Cents, including reimbursable expenses as described herein. The fee is based on the performance of the scope of services outlined in this Agreement, including **Exhibit B** attached hereto and incorporated by reference, and will be billed by Consultant using hourly rates and equipment charges as set forth in **Exhibit C** attached hereto and incorporated by reference, plus reimbursable expenses as set forth below. All bills will be submitted to City monthly as provided herein.

2. Reimbursable Expenses: Consultant will be reimbursed at the actual cost, not to exceed a total expense of \$200,522.60 (Two Hundred Thousand Five Hundred Twenty-Two Dollars and 60 Cents) for the following expenses related only to the Project: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; (f) expenses of renderings and models requested by City, and (g) other costs as authorized by City in writing as set forth herein.

## **B. SERVICES BEYOND THE SCOPE OF SERVICES**

1. Change in Scope: For substantial modifications in authorized Project scope, substantial modifications of drawings, or substantial modifications to specifications previously accepted by City, when requested by City and through no fault of Consultant, Consultant will be compensated for time and expense required to incorporate such modifications at Consultant's standard hourly rates per **Exhibit C**; provided, however, that any increase in fee or extension of time for Consultant to complete the services must be approved by City in writing. Consultant will correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Consultant's negligence or other actionable fault.
2. Additional Services: Consultant will provide Additional Services authorized by a supplemental agreement executed in writing by the Parties. Prior to commencing any Additional Services, Consultant must submit a proposal outlining the Additional Services to be provided, estimation of total hours, completion date, and a maximum fee based upon the hourly rate schedule attached hereto as **Exhibit C**. Such Additional Services may include, but are not limited to, making computations and determinations of special assessments, making special trips requested by City other than those required by Section III, preparing changes in plans ordered by City or made necessary by causes beyond the control of Consultant, providing services necessitated in the event the Professional Services are suspended or abandoned, if such suspension or abandonment is not the result of a breach of this Agreement by Consultant, and providing any other special services not otherwise covered by this Agreement which may be requested by City to complete the Project. Payment to Consultant as compensation for Additional Services will be in accordance with the hourly rate schedule attached as **Exhibit C**.
3. Special Services: Consultant may be called on to serve as a consultant or witness in any litigation, arbitration, legal or administrative proceeding arising out of this Project. If Consultant is requested, in writing, by City, to appear as a witness, it will be paid its hourly fee as reflected on the hourly rate schedule attached hereto as **Exhibit C**. Consultant will not be paid extra by City if Consultant's appearance is to defend its Professional Services.

## **C. BILLING & PAYMENT**

1. Billing: Consultant may bill City monthly for completed Professional Services, including reimbursable expenses. The bill submitted by Consultant must itemize the Professional Services and reimbursable expenses for which payment is requested. City agrees to pay

Consultant within thirty (30) days of approval by the Governing Body or other agent of City in accordance with the City's Procurement Policy.

2. City's Right to Withhold Payment: In the event City becomes credibly informed that any representations of Consultant provided in its monthly billing are wholly or partially inaccurate, City may withhold payment of sums then or in the future otherwise due to Consultant until the inaccuracy and the cause thereof is corrected to City's reasonable satisfaction. In the event City questions some element of an invoice, that fact will be made known to Consultant immediately. Consultant will help effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by City will be paid to Consultant in accordance with the contract payment procedures.
3. Progress Reports: A progress report must be submitted with each monthly pay request indicating the percentage of Professional Services completed to date. This report will serve as support for payment to Consultant.

#### **D. SCHEDULE**

All services must be completed on or June 30, 2027.

### **SECTION III - RESPONSIBILITIES OF CONSULTANT**

Consultant will perform the Professional Services in all phases of the Project to which this Agreement applies as herein provided and which are required for the construction of the Project as described below:

#### **A. PRELIMINARY DESIGN PHASE**

1. Services: The Professional Services to be provided during this phase are set out in **Exhibits B, D, and E**, attached hereto and incorporated by reference.
2. Preliminary Design Documents: Consultant will furnish City copies of the above preliminary design documents per the City of Olathe Technical Specifications and Design Criteria for Public Improvements, unless otherwise noted in **Exhibit B**.
3. Permits and Right-of-Way: These Professional Services will include preparation of plans, exhibits and applications required for securing approvals, licenses, or permits from governmental or corporate agencies or authorities, and providing City with documents for right-of-way and/or easement acquisition necessary for the construction of the improvement, unless eminent domain proceedings are required to secure the right-of-way and/or easements. Consultant will comply with the conditions set out in the Land Acquisition Checklist for Consultant Projects as in **Exhibit D**. City will be responsible for acquiring the necessary Right-of-Way or Easements, unless otherwise agreed upon between City and Consultant. A property map of the areas needed to be acquired, and other necessary information related to such acquisition, will be provided by Consultant with copies of the preliminary construction plans to the Project Manager. It is recognized that such information cannot be provided for some tracts until the completion of the final

construction plans. Consultant will also provide any necessary ownership and encumbrance (O&E) documents.

## **B. FINAL DESIGN PHASE**

1. Services: The Professional Services to be provided during this phase are set out in **Exhibits B and E**, attached hereto and incorporated by reference.
2. Final Design Documents: Consultant will furnish City copies of the final design plans per the City of Olathe Technical Specifications and Design Criteria for Public Improvements unless otherwise noted in **Exhibit B**.
3. Contract Documents: Consultant will prepare for City all Project construction contract forms, final design plans, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents requested by City, unless such documents are provided by City.

## **C. BIDDING PHASE**

1. Services: The Professional Services to be provided during this phase are set out in **Exhibit B**, attached hereto and incorporated by reference.

## **D. CONSTRUCTION PHASE**

1. In-House Administration and Inspection: It is understood that City will provide full-time, in-house administration and inspection of the construction Project and the work of the construction contractor at City's expense, unless otherwise agreed upon in writing by the Parties. Consultant will assist City by providing general administration and observation of the work of the construction contractor as requested by City by conducting periodic observations of the construction contractor's work during construction and will assist City in a final observation of the construction Project after completion of the work by the construction contractor. Consultant will also check shop drawings and assist City in making interpretation of plans and specifications and reviewing pay estimates for making payments to the construction contractor.
2. Services: The Professional Services provided during this phase are set out in **Exhibits B and E**, both attached hereto and incorporated by reference.
3. Additional Drawings: If during construction, situations arise which require additional drawings or details, Consultant agrees to provide such additional drawings or details at no cost to City when the additional drawings or details are required to correct Consultant's errors or omissions in Consultant's Documents or clarify Consultant's intent in the original design and preparation of construction drawings. If such situations occur through no fault of Consultant, or are beyond Consultant's control, both Parties agree to negotiate an equitable payment to Consultant for Consultant's Professional Services rendered, which will be accomplished through a Change Order.

4. Staking: The Consultant will provide construction staking for the Contractor. The Professional Services provided during this phase are set out in **Exhibits B and E**, both attached hereto and incorporated by reference.
5. Notice of Defects: If, based on Consultant's involvement during the construction phase, Consultant observes or otherwise becomes aware of any defect in the work, Consultant will give prompt written notice to City of such defects and their approximate location on the Project. However, Consultant will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions, inspections and programs in connection with the work, since these are solely the construction contractor's responsibility under the contract for construction to be entered into with City. Consultant will not be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the Contract Documents. Consultant will not have control over or charge of acts or omissions of any construction contractor, any of a construction contractor's subcontractors, or any of the agents or employees of a construction contractor selected by City to construct the Project.
6. Shop Drawings: Consultant will review and take appropriate action on the chosen construction contractor's shop drawings and samples, and the results of tests and inspections and other data (collectively the "Submittals") which each construction contractor is required to submit for the purposes of reviewing for compliance with the design concept and conformance with the requirements of the Contract Documents and the City of Olathe Technical Specifications and Design Criteria for Public Improvements. However, the Parties recognize that any change to the Contract Documents must be agreed to by City and reflected in a signed Change Order. The construction contractor shall notify Consultant in writing or electronic communication of any deviation from the Contract Documents contained in any Submittal.

#### **E. GENERAL DUTIES AND RESPONSIBILITIES**

1. Personnel: Consultant will assign only qualified personnel to perform any service concerning the Project as identified in Consultant's response to the Request for Proposals. At the time of execution of this Agreement, the Parties anticipate that the following individual will perform as the principal on this Project: Justin Likes. As principal on this Project, this person will be the primary contact with the City's Project Manager and will have authority to bind Consultant. So long as the individual named above remains actively employed or retained by Consultant, such individual will perform the function of principal on this Project. For the Professional Services rendered hereunder, Consultant, and any of its subcontractors, will employ engineers, architects, landscape architects, and surveyors licensed by the Kansas State Board of Technical Professions.
2. Subsurface Borings & Material Testing: If tests, additional to those provided for in **Exhibit B**, are required for design, Consultant will prepare specifications for the taking of the additional borings. Such subsurface borings and testing, as defined herein, will be provided by the City's contracted testing consultant or its subcontractors.
3. Utility Coordination: Consultant will comply with the conditions set out in the Utility

Coordination Checklist as in **Exhibit E**. The services required of Consultant by this checklist are expected to usually occur during the Preliminary Design, Final Design, and Construction phases; however, Consultant's responsibilities under this checklist may sometimes occur at other times.

4. Service By and Payment to Others: Any services authorized in writing by City and performed by any party other than Consultant or its subcontractors (a "Third Party") in connection with the proposed Project will be contracted for and paid for by City. In addition to payments for the Third Party's professional services, this may also include necessary permits, licenses, ownership certifications, materials testing, advertising costs, and other special tests or other services required or requested by City or Consultant which are not defined within the scope of services of Consultant as set forth herein. Fees for such extra services will be subject to negotiation between City and the Third Party. Fees will be approved by City in writing prior to the execution of any extra services. Although Consultant may assist City in procuring such services of Third Parties, Consultant will in no way be liable to either City or such Third Parties in any manner whatsoever for such services or for payment thereof.
5. Subcontracting or Assignment of Services: Consultant may not subcontract or assign any of the Professional Services to be performed under this Agreement without first obtaining the written approval of City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge Consultant from any obligation under this Agreement. Any person or firm proposed for subcontracting Professional Services under this Agreement will maintain throughout the duration of the Agreement, insurance as provided in Section V.D.2. herein, and will additionally maintain Professional Liability insurance in a minimum amount of \$1,000,000 per claim and in the aggregate and provide City with an insurance certificate showing the insurance limits provided by Consultant's subconsultant. Any services completed by a City-approved subcontractor of Consultant pursuant to this Agreement may not be increased more than ten percent (10%) over the actual cost of the services.
6. Endorsement: Consultant must sign and seal all final plans, specifications, estimates and engineering data furnished by Consultant, except As-Built drawings that are based on information provided by the construction contractor. Any review or approval by City of any documents prepared by Consultant, including but not limited to the plans and specifications, will be solely for determining whether such documents are consistent with the City of Olathe Technical Specifications and Design Criteria for Public Improvements and may not be construed as City assuming responsibility for the accuracy, adequacy, fitness, suitability and coordination of Consultant's services and deliverables. No review of such documents will relieve Consultant of its responsibility for the accuracy, adequacy, fitness, suitability and coordination of its services and deliverables.
7. Inspection of Documents: Consultant must maintain all Project records for inspection by City at reasonable times and places upon written request during the contract period and for three (3) years from the date of final payment.
8. Standard of Care: Consultant will exercise the same degree of care, skill, and diligence in

the performance of the Professional Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances (“Standard of Care”). If Consultant fails to meet the foregoing standard, Consultant will perform at its own cost, and without reimbursement from City, the Professional Services necessary to correct errors and omissions in the Consultant Documents which are caused by Consultant’s negligence.

#### **SECTION IV - CITY OF OLATHE'S RESPONSIBILITIES**

##### **A. COMMUNICATION**

City will provide to Consultant information and criteria regarding City's requirements for the Project; examine and timely respond to Consultant's submissions; and give prompt written notice to Consultant, who will respond promptly, whenever City observes or otherwise becomes aware of any defect in the Professional Services. Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by City.

##### **B. ACCESS**

City will provide access for Consultant to enter public and private property related to the Project and performance of Consultant’s obligations under this Agreement.

##### **C. DUTIES**

City will perform the various duties and services in all phases of the Project which are outlined and designated in **Exhibit B** as City's responsibility.

##### **D. PROGRAM AND BUDGET**

City will provide all relevant information reasonably required for Consultant to perform its obligations herein, including but not limited to City's objectives, schedule, constraints, budget with reasonable contingencies, and other necessary design criteria for the Project.

##### **E. ADMINISTRATIVE SERVICES**

City will furnish all City-related legal, accounting, insurance and audit services as may be necessary at any time for completion of the Project. However, in no event will any City-related legal, accounting, insurance and or audit services be provided on behalf of Consultant, nor will Consultant serve any other role than as an independent contractor of City.

##### **F. BOND FORMS**

City will furnish all bond forms required for the Project.

##### **G. PROJECT REPRESENTATIVE**

City will designate a Project Manager to represent City in coordinating this Project with Consultant. The City’s Project Manager will have the authority to transmit instructions and



decisions of City.

**SECTION V - GENERAL PROVISIONS**

**A. TERMINATION**

1. Notice: City reserves the right to terminate this Agreement for either cause (due to Consultant’s failure to substantially perform its obligations hereunder) or for its convenience and without cause or default on the part of Consultant, by providing fifteen (15) days' written notice of such termination to Consultant. Upon receipt of such notice from City, Consultant will, at City's option as contained in the notice: (1) immediately cease all Professional Services; or (2) meet with City and, subject to City's approval, determine what Professional Services will be required of Consultant in order to bring the Project to a reasonable termination in accordance with the request of City. Consultant will also provide to City copies of all drawings and documents completed or partially completed at the date of termination for which Consultant has been fully paid. If City defaults on its obligations under this Agreement, (due to City’s failure to substantially perform its obligations under this Agreement), Consultant must notify City by written notice of its intent to terminate and City will have fifteen (15) days from the date of the notice to cure or to submit a plan for cure acceptable to Consultant. Consultant may terminate this Agreement for cause based upon City’s failure to substantially perform its obligations hereunder, by providing fifteen (15) days’ written notice of such termination. In no event may Consultant terminate the contract solely for its convenience without cause.

Address for Notice:

City of Olathe  
Attn: Aaron Wasko  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768

TREKK Design Group, LLC  
Attn: Justin Likes  
1411 E 104th St  
Kansas City, MO 64131

2. Compensation for Convenience Termination: If City terminates for its convenience as provided herein, City will compensate Consultant for all Professional Services properly completed and reimbursable expenses incurred to the date of its receipt of the termination notice and any additional Professional Services and reimbursable expenses requested by City to bring the Project to reasonable termination. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed.

3. Compensation for Cause Termination: If City terminates for cause or default on the part of Consultant, City will compensate Consultant for the reasonable cost of Professional Services and reimbursable expenses incurred as of the date of the termination notice. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed. City also retains all its rights and remedies against Consultant including but not limited to its rights to sue for damages, interest and attorney fees recoverable by law.

4. Incomplete Documents: Neither Consultant nor its subcontractors will be responsible for errors or omissions in documents which are incomplete because of an early termination under this Section, or Consultant having been deprived of the opportunity to complete such documents and prepare them to be ready for construction.
5. Termination for Lack of Funds: If, for whatever reason, adequate funding is not made available to City to support or justify continuation of the level of Professional Services to be provided by Consultant under this Agreement, City may terminate or reduce the amount of Professional Services to be provided by Consultant under this Agreement. In such event, City will notify Consultant in writing at least thirty (30) days in advance of such termination or reduction of Professional Services for lack of funds.

## **B. DISPUTE RESOLUTION**

City and Consultant agree that disputes relative to the Project will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, and subject to the rights of City or Consultant to terminate this Agreement for cause, Consultant will proceed with the Professional Services as per this Agreement as if no dispute existed, and City will continue to make payment for Consultant's completed Professional Services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

## **C. OWNERSHIP OF CONSULTANT DOCUMENTS**

Consultant will provide City a copy of all Consultant Documents, which will become the property of City upon payment by City of Consultant's fees through the applicable phase of said Consultant Documents. Consultant will retain ownership and copyright, if any, of Consultant's standard details and aspects of the Consultant Documents that were generated prior to this Agreement. If Consultant is paid in full for its Professional Services, then City may subsequently reuse the final Consultant Documents without any additional compensation to or agreement of Consultant. Prior to such reuse by City, Consultant may remove all references to Consultant from the Consultant Documents. Consultant does not intend or represent the Consultant Documents to be suitable for reuse by City on any other project and such reuse without written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant. City does not take any responsibility for the reuse of documents by others.

## **D. INSURANCE**

1. General: Consultant will maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in such amounts as required in **Exhibit F (City of Olathe Insurance Requirements)**. Professional Liability may be written on a "claims made" basis. Consultant will provide certificates of insurance and renewals thereof on forms acceptable to City (**Exhibit G – Certificate of Insurance**). Consultant is required to promptly notify City of a material change or cancellation of any

policy listed on the Certificate.

2. Subcontractor's Insurance: If a part of the Professional Services under this Agreement is to be sublet, Consultant will either (a) cover all subcontractors in its insurance policies, or (b) require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss in the minimum amounts designated herein. If Consultant selects option (b), then Consultant agrees to provide the City's Risk Manager a certificate of insurance acceptable to the Risk Manager at least seven (7) days prior to allowing the subcontractor to perform any services on this Project. Consultant agrees that any subcontractor providing services on said Project without providing a certificate of insurance acceptable to the City's Risk Manager will immediately cease all services on said Project and will assume all financial risk associated with such failure thereto.
3. Mutual Wavier of Subrogation: To the extent that any damages are covered by property insurance maintained during or after the completion of Consultant's services, City and Consultant release each other and their respective employees and sub-consultants and waive all rights, including rights of subrogation, except for rights they may have to the proceeds of that insurance. City and Consultant shall require substantially the same subrogation wavier by their respective contractors, subcontractors, and consultants.

#### **E. INDEMNITY**

1. Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense recoverable by law), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the Parties hereto, which arise out of or are connected with the performance of this Agreement.
2. Indemnification and Hold Harmless: For purposes of this Agreement, Consultant agrees to indemnify and hold harmless City and its officials and employees from any and all Loss to the extent Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Consultant or its subcontractors. Neither acceptance of completed work nor payment therefor nor termination or expiration of this Agreement releases Consultant of its obligations under this paragraph.
3. Comparative Fault & Contributory Negligence: It is a specific element of consideration of this Agreement that the indemnity in Section V.E.2 will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of City or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of City's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Consultant's obligation hereunder will not include amounts attributable to the fault or negligence of City or any Third Party for whom Consultant is not responsible.

4. Damage Limitations: The indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Consultant or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
5. Negligence by the City: Consultant is not required hereunder to defend City or its employees or officers from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on City's negligence.

**F. AFFIRMATIVE ACTION/OTHER LAWS**

1. Kansas Act Against Discrimination: During the performance of this Agreement, Consultant agrees that:
  - a. Consultant will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, gender, disability, national origin, ancestry, or age;
  - b. in all solicitations or advertisements for employees, Consultant will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
  - c. if Consultant fails to comply with the way Consultant reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by City without penalty;
  - d. if Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Consultant will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
  - e. Consultant will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
2. Exceptions to Applicability: The provisions of this Section will not apply to a contract entered into by City with Consultant if (a) Consultant employs fewer than four (4) employees during the term of such contract; or (b) Consultant's contract with City totals Ten Thousand Dollars (\$10,000) or less in aggregate.
3. Kansas Age Discrimination in Employment Act: Consultant further agrees and acknowledges that it will abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act

(42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

4. Kansas Fairness in Public Construction Contract Act: The Parties agree and acknowledge that the services provided under this Agreement are within the scope of the Kansas Fairness in Public Construction Contract Act (K.S.A. 16-1901 et seq.) and that no provision of this Agreement waives, alters, or supersedes any provisions of said Act.

#### **G. ENTIRE AGREEMENT**

This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

#### **H. APPLICABLE LAW, JURISDICTION, AND VENUE**

Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

#### **I. NO THIRD-PARTY BENEFICIARIES**

Nothing contained herein will create a contractual relationship with, or any rights in favor of, any Third Party.

#### **J. INDEPENDENT CONTRACTOR**

Consultant is an independent contractor and not an agent or employee of City.

#### **K. DELIVERABLES**

1. Project Drawings: Project drawings which are developed by Consultant using a Computer Aided Drafting (CAD) System will be made available to City per the City of Olathe Technical Specifications and Design Criteria for Public Improvements. However, due to the potential that the information set forth on the electronic media could be modified by City, or other City consultants, unintentionally or otherwise, Consultant will remove all indices of its ownership, professional corporation name, seal, and/or involvement from each electronic display. If City provides such electronic media to others for any purpose, City will require the electronic media to be returned to City upon completion of such use. City recognizes that use of such electronic media will be at City's sole risk and without any liability risk or legal exposure by Consultant.
2. Project Documentation: All documentation provided City other than Project drawings will be furnished in either Microsoft Word file format or pdf format.

3. Conformed To Construction Drawings (“As Built” Drawings): Following construction, City and/or construction contractor will provide copies of changes and alterations made in the field during construction to Consultant to provide Conformed To Construction Drawings per the City of Olathe Technical Specifications and Design Criteria for Public Improvements. Consultant may rely on the information provided by City in preparing such documents, subject to the Standard of Care.

**L. COVENANT AGAINST CONTINGENT FEES**

Consultant represents that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this representation, City may terminate this Agreement without liability or may, in its discretion, deduct from the Total Fee or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**M. NO SOLICITATION TO HIRE CITY EMPLOYEES**

1. No Solicitation to Hire: Except as otherwise provided in this section, during the term of this Agreement and for one year after the Agreement’s expiration or termination, Consultant must not solicit to hire and then hire, or solicit to contract with and then contract with, any of the City’s current employees involved with the oversight or implementation of this Agreement, including but not limited to the Project Manager.
2. No Restriction on City Employees: The foregoing restrictions shall not prevent City employees from affirmatively seeking employment elsewhere.
3. Liquidated Damages: The Parties agree that in the event of a breach of this provision that damages would be uncertain and difficult to accurately estimate. Therefore, if Consultant breaches this provision, Consultant agrees to pay City liquidated damages to the City equal to the annual salary of the applicable employee hired by or contracting with Consultant.

**N. COMPLIANCE WITH LAWS**

Consultant will abide by all applicable federal, state and local laws, ordinances and regulations applicable to the performance of Professional Services at the time the Professional Services are performed. Consultant will exercise the Standard of Care so that the Consultant Documents will comply with applicable laws and codes. Consultant will secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of the obligations under this Agreement, and will provide City a copy of its certificate of good standing to conduct business in the State of Kansas with this Agreement (**Exhibit H**).

**O. BETTERMENT/ADDED VALUE**

If Consultant fails to exercise the Standard of Care and omits from its design a required component of the Project, City will be responsible for the Construction Cost it would have paid if the item had been properly included by Consultant. In addition, Consultant will not be responsible for any upgrade or enhancement of an item.

**P. LIMITATION OF LIABILITY**

IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO CITY AND CONSULTANT, THE RISKS HAVE BEEN ALLOCATED SUCH THAT CITY AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL LIABILITY OF CONSULTANT, ITS EMPLOYEES, SUBCONSULTANTS, AND SUBCONTRACTORS TO CITY FOR ANY BREACH OF CONTRACT CLAIM PERTAINING TO OR ARISING OUT OF THE PERFORMANCE OF CONSULTANT’S SERVICES, SHALL NOT EXCEED THE DOLLAR AMOUNTS OF THE LIABILITY INSURANCE LIMITS OF CONSULTANT AS REQUIRED BY THIS AGREEMENT. CITY AND CONSULTANT ACKNOWLEDGE THAT ADEQUATE CONSIDERATION HAS BEEN GIVEN FOR THIS LIMITATION OF LIABILITY.

**Q. TITLES, SUBHEADS AND CAPITALIZATION**

Titles and subheadings as used herein are provided only as a matter of convenience and will have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals has no legal bearing on the interpretation of such terms.

**R. SEVERABILITY CLAUSE**

If any provision of this Agreement is determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) will be null and void; provided, however, that the remaining provisions of this Agreement will be unaffected and will continue to be valid and enforceable.

**S. AMBIGUITY CLAUSE AND HIERARCHY OF INTERPRETATION**

If any ambiguity, inconsistency or conflict arises in the interpretation of this Agreement, the same will be resolved by reference first to the terms and conditions of this Agreement, and any exhibits attached hereto or incorporated by reference as noted below. In the event of any conflict or inconsistency between this Agreement and its exhibits, the following hierarchy of interpretation will apply:

- 1. This Agreement;
- 2. Scope of Services (Exhibit B);
- 3. City’s Request for Proposals/Request for Qualifications (incorporated by reference);
- 4. Consultant’s Response to RFP/RFQ (incorporated by reference).

*[The remainder of this page is intentionally left blank.]*

**S. EXECUTION OF CONTRACT**

The Parties hereto have caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**CITY OF OLATHE, KANSAS**

By: \_\_\_\_\_  
Mayor

ATTEST:


\_\_\_\_\_  
City Clerk

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or Deputy/Assistant City Attorney

TREKK Design Group, LLC

By:   
\_\_\_\_\_  
Kimberly Robinett, CEO Managing Member  
1411 E 104<sup>th</sup> Street  
Kansas City, MO 64131

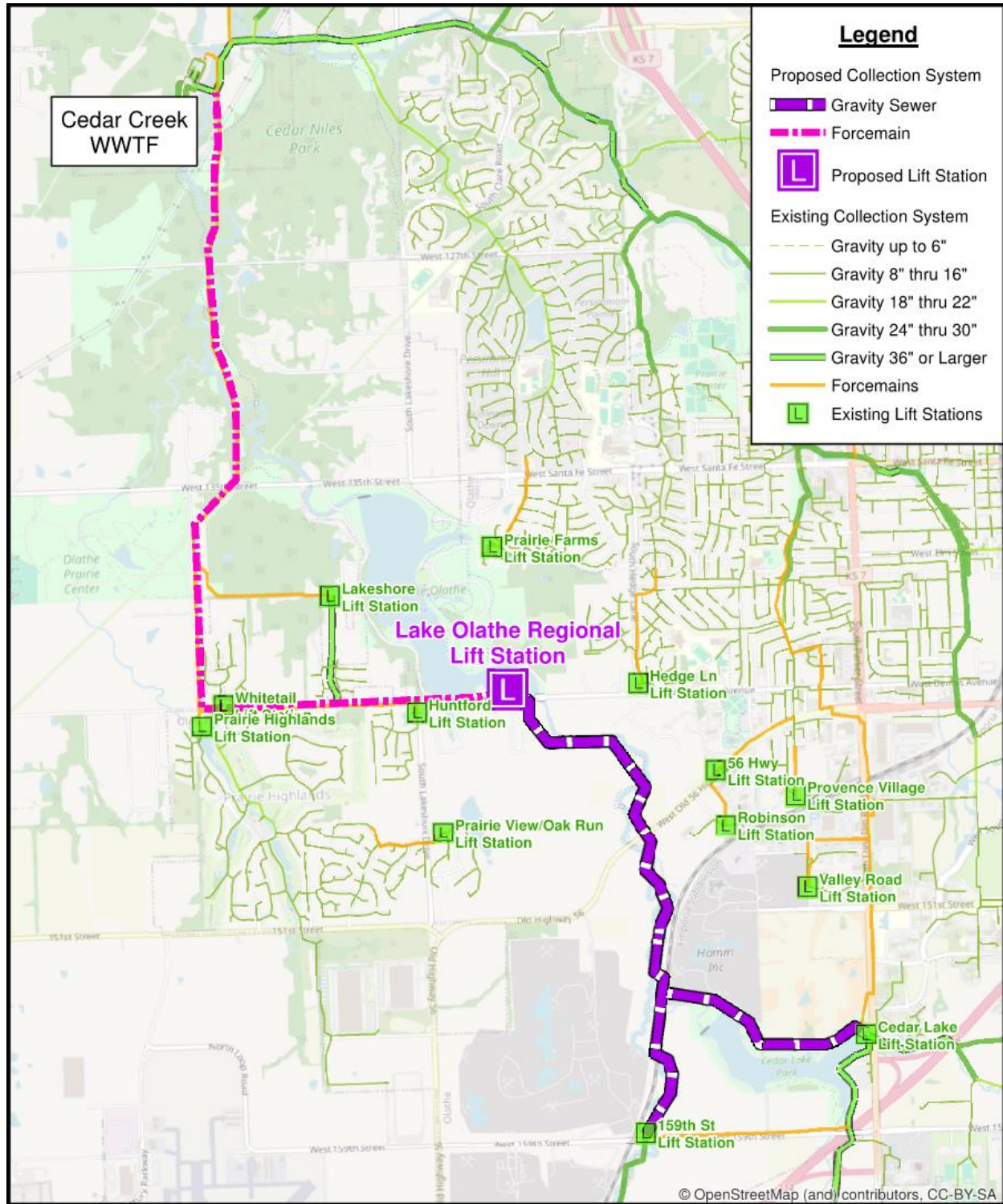


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OF EXHIBITS**

<b>Exhibit A</b>	<b>Description of Project &amp; Map</b>
<b>Exhibit B</b>	<b>Scope of Services</b>
<b>Exhibit C</b>	<b>Fee &amp; Rate Schedule</b>
<b>Exhibit D</b>	<b>Land Acquisition Checklist for Consultant Projects</b>
<b>Exhibit E</b>	<b>Utility Coordination Checklist</b>
<b>Exhibit F</b>	<b>City of Olathe Insurance Requirements</b>
<b>Exhibit G</b>	<b>Certificate of Insurance</b>
<b>Exhibit H</b>	<b>Certificate of Good Standing to Conduct Business in Kansas</b>

**EXHIBIT A**  
**Description of Project & Map**

The project includes the design and construction of nearly 2.5 miles of gravity sanitary sewer interceptor (estimated 30" to 54") from the City's existing 159th Street lift station to Dennis Avenue near the entrance to the City's Lake Olathe park (see map on next page). Another branch from this interceptor will connect to the City's existing Cedar Lake lift station (roughly 1 mile). The construction of both interceptors will allow for the decommissioning of both lift stations. At the north end of the main interceptor, a large regional lift station (12 to 16 MGD) will be constructed, and all flows will be pumped through a new force main from the lift station at Dennis Avenue all the way to the City's Cedar Creek Wastewater Treatment Plant located on 119th Street west of Clare Road.



(Project Location Map)

**EXHIBIT B**  
**Scope of Services**

**EXHIBIT C**  
**Fee & Rate Schedule**

## EXHIBIT D

### LAND ACQUISITION CHECKLIST FOR CONSULTANT PROJECTS

**Complete submittal of these documents is required.**

- \_\_\_ Determine what types of easements are required for each tract:
  - i.e. Street Dedication; Permanent Street Easement; Temporary Construction Easement; Permanent Utility Easement; Permanent Drainage Easement; Permanent Sanitary Sewer Easement; Permanent Waterline Easement; Permanent Sidewalk & Utility Easement; Permanent Wall Easement; Permanent Bike Trail, Utility & Recreational Easement.
  
- \_\_\_ REQUIRED INFORMATION:
  - a) City Project No. and Project Name
  - b) Current Ownership (both husband and wife's name, even if only owned by one spouse)
    - 1) If a trust, the name and date of the trust
    - 2) If a corporation or LLC, state of incorporation or formation
    - 3) If partnership, full name of partnership
  - c) Johnson County Parcel ID number
  - d) Number the tracts in the project (up one side and down the other) (Tract No. \_\_)
  - e) Situs Address
  - f) Mailing Address
  - g) Legal description of the new taking, including total square footage
  - h) Tract map
  - i) Ownership & Encumbrance (O&E) title report, not more than 9 months since certification, showing current ownership, liens, mortgages, existing easements, leases (if recorded) and any other encumbrances upon the property. This requirement also includes tracts where only a temporary construction easement is needed.
  - j) Copy of last deed(s) of record. If an undivided interest is conveyed in the deed, provide copies of all deeds which comprise the whole interest. (If undivided one-half is conveyed to husband's trust and undivided one-half interest is conveyed to wife's trust, provide copies of both deeds.
  - k) Common errors to avoid – verify marital status. *BEFORE SUBMITTING DOCUMENTS TO CITY OF OLATHE VERIFY THE O&E'S TO ENSURE OWNERSHIP HAS NOT CHANGED.*

\_\_\_ Tract Map will be considered complete when it contains the following information (example available upon request):

- a) Map of entire property (May not be possible on large parcels and still showing legible taking) showing location of the proposed easement(s) and existing easements. Any trees to be removed, fences to be moved, monument signs, and irrigation systems should be noted on the plans. Outlines of buildings are to be shown on the plans so that it is evident how close the easements are to the existing building. Dimensions/bearings for easements to be clearly shown on map. It is acceptable to place all easements on one exhibit as long as each easement is easily identified. If the exhibit is too cluttered, then the easements should be placed on separate exhibits with permanent easements on one exhibit and temporary easements on a separate exhibit. **EASEMENT SHALL BE CLEARLY VISIBLE ON DRAWING.** Johnson County Register of Deeds scans the recorded easement in black and white, so be aware of this when drawing the easement on the tract map. Make sure easement area can easily be seen in black and white.
- b) Property owner's names, mailing address, situs address (if different from mailing address), Johnson County Parcel ID number, and tract number.
- c) Map of tract should show dimensions of tract and property lines clearly marked.
- d) Common errors to avoid: North arrow pointing in the wrong direction, verification that the easement legal description closes upon itself.

\_\_\_ Legal description and tract maps shall be signed by a Registered Land Surveyor stating that the ownership, easement legal descriptions, description in the deed for the entire tract only when a total property taking is occurring, and surveys for the easement area have been personally reviewed and determined to be accurate in accordance with the plans for the project. The consultant shall make corrections, at no cost to the City, to fix errors determined by the City or the Johnson County Register of Deeds that are the responsibility of the Registered Land Surveyor. These errors may include but are not limited to clerical errors, inconsistencies between the easement legal description and tract map, easement legal description not closing upon itself, or other errors in requirements on this checklist. **Both legal description and tract map(s) shall be marked Exhibit "A" as referenced in the easement documents.**

\_\_\_ Appropriate easement document in Word (sometimes referred to as "front end" document). PDF's are available on the City's website (<http://www.olatheks.org/government/public-works/dedications-easements>). Word copies can be obtained by contacting the Olathe Public Works Department Project Manager.

\_\_\_ Submit Documents to Public Works staff in electronic format:

- Word copy of legal description
- PDF of signed and sealed legal description

- Tract map signed and sealed
- Word copy of easement ("front end") document
- O&E title report
- Last deed of record



## EXHIBIT E

# Utility Coordination Olathe CIP projects

Each project is unique and can be expected to have varying degrees of impact to utilities ranging from minor adjustments to complex and lengthy relocations. A successful utility coordination process has three main facets simplified to:

- What is in conflict
- Where it will be moved
- How long it will take to move it

The checklist below is a tool to help with this process.

The city's project design firm will have primary responsibility for Coordination and Design phases with participation from the city staff. The city staff will have primary responsibility for Construction (utility relocate) phases. City staff may consult with the project design firm if changes or issues arise during the construction phase.

*Please also reference APWA Section 5900 – Best Management Practices: Utility Coordination for CIP*

- Design Firm/Surveyor call in locates early in the project design phases**
  - Note – often utilities will be labeled clear or fail to mark lines as part of a design ticket. Non-response tickets may be required. Additional issues shall be reported to the City for assistance.
- Project notice to utilities as soon as utilities in the project footprint have been identified (notify all utilities listed on KS One Call tickets)**
  - Describe project improvements
  - Request detailed existing mapping
  - Request documentation of any private easements and claims for reimbursement
  - Provide a general schedule and include a response by date
  - Copy Project Manager and Utility Coordinator
- Survey locates (as much detail as possible) once all utilities have been marked as per locate requests**
  - Survey locate marks by provider
  - Survey utility boxes, vaults, and other structures (make note of provider)
  - Make note of overhead infrastructure in addition to each power pole.
    - Transformers, COM attachers, power or COM risers, guy wires, etc.
- Incorporate survey into project plans for 30% submittal**

*(Any utility line work on plans shall only be from survey of utility marks or pothole points. Small gaps can be filled by mapping info and needs to be noted as such)*

  - Label lines and facilities **by provider**
    - Include boxes, vaults, and other structures (by provider)
    - Note overhead infrastructure in addition to each power pole
      - Transformers, COM attachers, power or COM risers, guy wires, etc...
    - See **EXHIBIT E.1** for examples of how information will need to be captured.

- Some providers may only be labeled by CATV and will require further coordination to confirm ownership of lines.
  - Review existing mapping to help identify any lines or other infrastructure that may have been missed during locates and survey.
  - Utility lines shall NOT be added to project plans based on mapping or as-built info only.
  - Utilize utility information obtained to minimize utility impacts when possible during project design.
- **Project design firm to generate a master utility plan (may not apply to all projects)**
- Utilities labeled by provider and in applicable colors.
  - Denote utilities that are to be abandoned or vacated.
  - Recommend alternate routes to avoid points of conflict such as proposed storm crossing or conflicts with other utility relocations when possible.
  - Continue to update sheets as utility relocate plans are received.
- **Conflict analysis based on survey, mapping, and other info**
- X-Y locations that may be impacted by Z axis improvements (pothole recommendations)
    - Consider not only project improvements but also constructability.
      - Over dig for walls, storm sewers, etc.
      - Additional depth for rock
      - *Potholing is the responsibility of each individual utility*
        - The City's project team may elect to also pothole private utilities when it is determined beneficial to the project.
  - The project design firm shall make a list of potential conflict points for discussion at the utility meetings. (Individual utility companies should also be doing the same)
    - When making a list, keep in mind utility locates are not always accurate so infrastructure near proposed improvements may need to be added to the list for discussion (share this list for comment by the City).
- **Project design firm to help prioritize location of utilities when overlapping potential relocate paths are identified (ongoing throughout project).**
- Identify opportunities for joint trenches when possible or in tight areas of the project.
- **Design Firm to notify all parties when project plans change (ongoing throughout project).**
- Reevaluate/conflict analysis in areas of change
- **Pre-utility meeting – “plan of attack discussion” prior to utility meeting #1 (city and design team)**
- What is the utility due date?
  - What are the utility schedule milestones?
    - Start to develop overall utility schedule.
  - Are there project pinch points?
  - Identify any utilities claiming private easement/ reimbursement.
  - Is there project phasing that should be prioritized by utilities too?
  - How are utility meetings to be setup for the project? Joint meetings then individual?
  - Other?

- **Utility Meeting #1 around 30% plan submittal**
  - Schedule
  - Request any existing mapping or private easement information not yet collected.
  - Early project overview and potential opportunity to adjust project improvements around utilities.
  - Distribute meeting minutes.
  
- **Individual Meetings ongoing as needed**
  - Schedule
  - Overall review of any likely points of conflict or other concern.
  - Discussion of where/how utilities will relocate.
    - *Example: if a proposed relocate is navigating storm sewers and grade cuts, is there a different path to simplify the relocate and setup the project for success?*
  - Distribute meeting minutes.
  
- **Utility Meeting #2 before 60% plans**
  - Schedule
  - Discussing progression of relocate plans
  - Distribute meeting minutes.
  
- **Utility providers to generate relocate plans on a timeframe agreed upon during coordination meetings.**
  - The design firm and City shall review relocate plans.
    - Consider including relocate plans in master utility plans
  - The design firm will gather any comments and respond accordingly to the utility.
  - Further review of revisions shall continue until the project team has no additional comments to relocate plans.
  - The design firm will incorporate relocate plans in to project plans and master utility plan sheets.

**HANDOFF POINT WHERE PRIMARY DUTIES SHIFT TO THE CITY UTILITY COORDINATOR (*Design firm may have incidental involvement as needed*). A FEW OF THESE DUTIES ARE NOTED BELOW:**

- **Utility Company and/or contractor to obtain a ROW permit prior to starting.**
  - The city will review the permit to confirm it matches previously reviewed relocate plans.
  
- **Utility Coordinator will check on utility construction, progress, and compliance with relocate plans.**
  
- **Utility Coordinator to look for potential oversights or other points of conflict not covered in the relocate plans.**
  - Minor issues may be addressed in the field by the City Utility Coordinator.
  - The City Utility Coordinator will reengage the project team and utility provider with any issues found requiring additional coordination.
  
- **Utility Coordinator to provide design firm and PM periodic updates on progress.**



## EXHIBIT F

### CITY OF OLATHE INSURANCE REQUIREMENTS

**A. Insurance.** Consultant agrees to secure and maintain throughout the duration of this Agreement insurance of such types and in at least such amounts as set forth below from a Kansas authorized insurance company which carries a Best's Policyholder rating of "A-" or better and carries at least a Class "VII" financial rating or better, unless otherwise agreed to by City:

1. Commercial General Liability: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any commercial general liability policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

**Limits:** Per Occurrence, including Personal & Advertising Injury and Products/Completed Operations: \$1,000,000; General Aggregate: \$2,000,000.

2. Business Automobile Insurance: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any automobile policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

**Limits:** Any Auto; OR All Owned Autos; Hired Autos; and Non-Owned Autos: Per occurrence, combined single limit: \$500,000  
Notwithstanding the foregoing, if Consultant does not own any automobiles, then Consultant must maintain Hired and Non-Owned Auto insurance.

3. Worker's Compensation and Employer's Liability: Workers compensation insurance must protect Consultant against all claims under applicable state Worker's Compensation laws at the statutory limits, and employer's liability with the following limits.

**Limits:** \$500,000 Each Accident/\$500,000 Policy Limit/\$500,000 Each Employee

4. Professional Liability: Consultant must maintain throughout the duration of this Agreement and for a period of three (3) years after the termination of this Agreement, Professional Liability Insurance.

**Limits:** Each Claim: \$1,000,000; General Aggregate: \$1,000,000

5. Cyber Insurance: If Consultant will have access to the City's network or City's data, Consultant must maintain throughout the duration of this Agreement and for a period of three (3) years after the termination of this Agreement. Coverage must

include: Cyber Incident/Breach Response and Remediation Expenses, Digital Data Recovery, Privacy and Network Security Liability, and Notification Expense.

**Limits:** Per claim, each insuring agreement: \$1,000,000; Aggregate: \$1,000,000

**B. Exposure Limits.** The above are minimum acceptable coverage limits and do not infer or place a limit on the liability of Consultant nor has City assessed the risk that may be applicable to Consultant. Consultant must assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverage. The Consultant's insurance must be primary, and any insurance or self-insurance maintained by the City will not contribute to, or substitute for, the coverage maintained by Consultant.

**C. Costs.** The cost of insurance will be included in the Consultant's bid or proposal and must be at Consultant's expense. Any and all deductibles or self-insurance in the above described coverages will be the responsibility and at the sole risk of the Consultant.

**D. Verification of Coverage**

1. Consultant must provide a certificate of insurance on ISO form or equivalent, listing the City as the certificate holder, and additional insured endorsements for the requested coverages.
2. Any self-insurance must be approved in advance by the City and specified on the certificate of insurance. Additionally, when self-insured, the name, address, and telephone number of the claim's office must be noted on the certificate or attached in a separate document.
3. When any of the insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage must be submitted along with the application for final payment.
4. For cyber insurance, the certificate of insurance confirming the required protection must confirm the required coverages in the "Additional Comments" section or provide a copy of the declarations page confirming the details of the cyber insurance policy.

**E. Cancellation.** No required coverage may be suspended, voided, or canceled, except after Consultant has provided thirty (30) days' advance written notice to the City.

**F. Subconsultant's Insurance:** If a part of this Agreement is to be sublet, Consultant must either cover all subconsultants under its insurance policies; OR require each subconsultant not so covered to meet the standards stated herein.

**EXHIBIT G**  
**Certificate of Insurance**





POLICY NUMBER: EPP 061 28 20  
POLICY TERM: 4/30/2024 – 4/30/2025  
NAMED INSURED: TREKK DESIGN GROUP, LLC  
INSURER: THE CINCINNATI INSURANCE COMPANY

COMMERCIAL GENERAL LIABILITY  
CG 20 01 12 19

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT  
CAREFULLY.**

**PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE  
CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured

Attachment Code: D592172 Certificate ID: 20596280  
Named Insured: TREKK Design Group, LLC  
Policy Term: 04/30/2024 – 04/30/2025  
Policy No.: EPP0612820  
Insurer: The Cincinnati Insurance Company

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CANCELLATION OR NONRENEWAL BY US  
NOTIFICATION TO A DESIGNATED ENTITY**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS PACKAGE POLICY  
CLAIMS-MADE EXCESS LIABILITY COVERAGE PART  
COMMERCIAL AUTO COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
DENTIST'S PACKAGE POLICY  
ELECTRONIC DATA LIABILITY COVERAGE PART  
EXCESS LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS COVERAGE PART  
PRODUCT WITHDRAWAL COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART PROFESSIONAL  
UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE RAILROAD  
PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY**

**SCHEDULE**

Name and mailing address of person(s) or organization(s):

Any person or organization to whom you have agreed in a written contract that notice of cancellation or nonrenewal of this policy will be given, but only if:

1. You send us a written request to provide such notice, including the name and address of such person or organization, after the first named insured receives notice from us of the cancellation or nonrenewal of this policy:  
and
2. We receive such written request at least 14 days before the beginning of the applicable number of days shown in this schedule.

Number of days notice (other than nonpayment of premium): 30

- A. If we cancel or nonrenew this policy for any statutorily permitted reason other than nonpayment of premium we will mail notice to the person or organization shown in the Schedule. We will mail such notice at least the number of days shown in the Schedule before the effective date of cancellation or nonrenewal.
- B. If we cancel this policy for nonpayment of premium, we will mail notice to the person or organization shown in the Schedule. We will mail such notice at least 10 days before the effective date of cancellation.
- C. If notice is mailed, proof of mailing to the mailing address shown in the Schedule will be sufficient proof of notice.
- D. In no event will coverage extend beyond the actual expiration, termination or cancellation of the policy.

POLICY NUMBER: EBA 061 28 20  
POLICY TERM: 4/30/2024 – 4/30/2025  
NAMED INSURED: TREKK DESIGN GROUP, LLC  
INSURER: THE CINCINNATI INSURANCE COMPANY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CinciPlus<sup>®</sup> BUSINESS AUTO XC+<sup>®</sup> (EXPANDED COVERAGE PLUS) ENDORSEMENT**

This endorsement modifies insurance provided by the following:

BUSINESS AUTO COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

### **B. Noncontributory Insurance**

SECTION IV - BUSINESS AUTO CONDI- TIONS, B. General Conditions, 5. Other Insurance c. is deleted in its entirety and replaced by the following:

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary and we will not seek contribution from any other insurance for any liability assumed under an "insured contract" that requires liability to be assumed on a primary noncontributory basis.

POLICY NUMBER: EBA 061 28 20  
POLICY TERM: 4/30/2024 – 4/30/2025  
NAMED INSURED: TREKK DESIGN GROUP, LLC  
INSURER: THE CINCINNATI INSURANCE COMPANY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CinciPlus ® BUSINESS AUTO XC+ ® (EXPANDED COVERAGE PLUS) ENDORSEMENT**

This endorsement modifies insurance provided by the following:

BUSINESS AUTO COVERAGE FORM

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

### C. Additional Insured by Contract

SECTION II - LIABILITY COVERAGE, A. Coverage, 1. Who is an Insured is amended to include as an insured any person or organization for whom you have agreed in a valid written contract to provide insurance as afforded by this policy.

This provision is limited to the scope of the valid written contract.

This provision does not apply unless the valid written contract has been:

1. Executed prior to the accident causing "bodily injury" or "property damage"; and
2. Is still in force at the time of the "accident" causing "bodily injury" or "property damage"

**EXHIBIT H**  
**Certificate of Good Standing to Conduct Business in Kansas**